IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 9979 of 2005

DATE OF DECISION: 17.8.2006

Nb.Sub. Ravinder Kumar

..... PETITIONER

VERSUS

Union of India and others.

.....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Angad Singh, Advocate for the petitioner.

Ms. Daya Chaudhary, Assistant Solicitor General of India for the respondents.

M.M.S.BEDI,J.

The petitioner has preferred this writ petition under Article 226 of the Constitution seeking issuance of a writ in the nature of mandamus against the respondents to grant him disability pension at the rate applicable to Nb.Subedar (Junior Commissioned Officer) as per Regulation 180 of Pension Regulations for the Army 1961 (Part-I) (for short 'the Regulations). He has also prayed for the grant of disability pension at 50% of the rates of disability pension as per para 7.2 of the Policy of Government of India vide letter No. 1(2)/97/(1)(Pen-1) dated 31.1.2001.

The undisputed facts are that the petitioner was enrolled in the

Army on 28.1.1975. In January 1992 he was promoted to the rank of Havildar (Other Rank). On 10.5.1991 he sustained injury i.e. "FRACTURE LATEROIS POSTERIOR MELLOLOUS (LT) ANKLE" while serving with Head Quarters 7 Artillery Brigade. He was placed in low medical category BEE (Temporary) for 6/12 years from 24.10.1991. He was promoted to the rank of Nb.Subedar (JCO) w.e.f. 1.1.1992. On review he was placed in low medical category BEE (Permanent) from 7.1.1993, as such he was discharged from service on 31.7.1993. He was granted service pension from 1.8.1993 for life by Chief Controller of Defence (Pensions), Allahabad for 18 years, 6 months and 3 days of service vide letter No. 7 (963)/2000/D (Pen-A & AC) dated 23.3.2001 (Annexure P-2). As the petitioner had been placed in low medical category at the time of discharge, he was brought before the Release Medical Board and the Board vide its finding dated 5.7.1993 described the disability as attributable to military service and the degree of disability was assessed for 2 years. Thereafter, he was granted temporary disability pension applicable to the rank of Havildar (OR) w.e.f. 1.10.1993 to 21.6.1998. The petitioner was again brought before the Re-Survey Medical Board for continuation of his disability pension which was assessed as 20% w.e.f. 22.6.1998. The degree of disablement was assessed by Re-Survey Medical Board as 20% for life w.e.f. 5.10.1998 as is evident from letter dated 23.3.2001 (Annexure P-2). The petitioner was granted disability pension at the rate of Rs.90/- per month from 5.10.1998 for life, which is applicable for the rank of Havildar (OR) based on 20% disability. As the petitioner had been granted disability pension at the rate applicable to Havildar (OR) and not at the rate

applicable to Nb.Subedar (JCO), the rank which he held at the time of retirement, he made a representation, which was rejected by A.S.C. Record (South) by letter dated 10.9.2003 (Annexure P-3) on the ground that he was Havildar (OR) at the time of sustaining the injury. The petitioner had placed his case before Defence Pension Adalat for the grant of disability pension applicable to Nb.Subedar (JCO) and also for the grant of disability pension at the rate of 50% instead of 20%. The Defence Pension Adalat sent the case of the petitioner to A.S.C. Records (South) for action but his claim was rejected vide letter dated 14.1.2005 (Annexure P-4). The validity of order dated 14.1.2005 (Annexure P-4) has been challenged. The impugned order rejecting the claim of the petitioner reads as follows:-

> " Refer to your letter No. DPDO/AMB/DEF PEN Adalat/2005/45 dated 08 Jan 2005.
>
> In this connection it is submitted that as per existing orders on the subject an individual is entitled for disability element for the rank on set of his Ist ID irrespective of rank on the date of retirement. In this instant case the rank of the individual at the time of onset of Ist ID was Havildar. Hence he is entitled to disability element for NCOs rank only.
>
> Further as regard stepping up of disability element to 50% is applicable to only those personnel who have been invalided out of service/discharged from service before completion of terms of engagement being placed in low medical category on or after 01 Jan 96. Since the above named individual was discharged from service wef 31 Jul 93 (AN), the same is not applicable to

him."

We have heard learned counsel for the parties, gone through the entire record and also the relevant regulations applicable to the facts of the case.

It is an admitted fact that the petitioner had suffered injury in the year 1991 while he was serving as Havildar. He was placed in low medical category in the year 1993 and was retired in the rank of Nb.Subedar (JCO) on 31.7.1993. The relevant rule, pertaining to the rank for assessment of disability pension is enshrined in Regulation 180, which reads as follows:-

Rank for assessment of disability pension

" The rank for the purpose of assessment of service element and disability element of disability pension shall be the substantive rank or higher paid acting rank, if any, held by the individual, on any of the following dates, whichever is most favourable:-

(a)**the date of discharge/invalidment from service, or**

(b) the date on which **he/she sustained the wound or injury or was first removed from duty** on account of a disease causing his disablement; or

(c)if he/she rendered further service and during and as a result of such service suffered aggravation of disability, the date of the later removal from duty on account of the disability.

Learned counsel for the respondents has not been able to support the impugned order dated 14.1.2005 (Annexure P-1) granting the

disability pension to the petitioner in the rank of Havildar (OR). In the light of Regulation 180 of the Regulations, reproduced herein above, the grant of disability pension is governed by the above said rule and the date of discharge/ invalidment from service, which is more favourable to the individual, has to be granted. As the petitioner had retired on 31.7.1993, Regulation 180 (a) would make him entitled for grant of disability pension in the rank of JCO , which he was holding on the said date. It is held that the petitioner is entitled to the service element as well as disability element from the date of his discharge.

Admissibility of disability pension at the rate 50% instead of 20%.

Learned counsel for the petitioner has submitted that the current rates of disability element of pension have been revised w.e.f. 1.1.1996 vide Government of India letter dated 31.1.2001 and as per the said letter the disability of the petitioner, which is 20% for life is required to be worked out as 50% for computing the disability element.

We have carefully considered the contention of the learned counsel for the petitioner and gone through para 7.2 of the letter of Government of India, which has not been denied in the written statement. Para 7.2 of the said letter is reproduced as follows:-

> " Where an Armed Forces personnel is invalided out under circumstances mentioned in para 4.1 above, the extent of disability or functional incapacity shall be determined in the following manner for the purposes of computing the disability element:-

Percentage of disability as assessed by invaliding medical board	percentage to be reckoned for computing of disability element
Less than 50	50
between 50 and 75	75
between 76 and 100	100

The argument of respondent is totally devoid of merit when it is argued that the revised disability percentage is not applicable to the petitioner as he had retired on 31.7.1993 whereas the letter dated 31.01.2001 has come in to operation w.e.f. 1.1.1996. We have considered the said contention and are of the opinion that in view of the judgment of the Supreme Court in the case of **Subrata Sen v s Union of India 2001(4) SCT 424**, the cut off date is not applicable in the present case of revision of pension. It was specifically held in the said judgment that any revision of pension scheme will be operative for all the pensioners and there is no question of providing any cut off date. The cut off date is justified only where the pension fund is created by contribution by employer and employees. The aforementioned view has been followed and applied in the cases of **State of West Bengal v West Bengal Pensioners' Association 2002(2) SCC 179** and **Pensioners' Association, Ex. Assam Oil Officers vs. Union of India (2004) 3 SCC 265.**

In view of the above discussion, we are of the considered view that the writ petition deserves to be allowed. Accordingly, the impugned order dated 14.1.2005 (Annexure P-4) is quashed and it is held that the petitioner is entitled to the assessment of pension in the rank of Nb.

Subedar (JOC) as per Regulation 180 of the Regulations with effect from the date of his retirement. We direct the respondents to refix the pension. However, the arrears shall be confined to three years and two months preceding the date of filing of the writ petition i.e. 4.7.2005. It is further held that for the purpose of computing the disability element, 20% of disability assessed by the Medical Board shall be reckoned as 50% as per letter dated 31.1.2001 w.e.f. 1.1.1996. The amount shall be calculated and arrears would like wise be paid to the petitioner for the period preceding three years and two months from the date of filing of the writ petition i.e. 4.7.2005.

The writ petition stands allowed in the above terms.

(M.M.M.BEDI)
JUDGE

August 17 ,2006 **(M.M.KUMAR)**
TSM **JUDGE**